

**BOARD OF APPEALS CASE NO. 5197**

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**BEFORE THE**

**APPLICANTS: Michael & Madeline Emm**

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**ZONING HEARING EXAMINER**

**REQUEST: Variances for an existing 6 foot high  
fence and gazebo within the required setbacks;  
400 Merrie Lane, Fallston**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 11/28/01 & 12/5/01**

**HEARING DATE: January 7, 2002**

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**Record: 11/30/01 & 12/7/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Michael & Madeline Emm, are seeking a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow a fence higher than 4 feet (existing 6 feet), and a variance pursuant to Sections 267-26C(4) and 267-35B, Table III, to allow a gazebo within the front yard setback in an RR/Rural Residential District.

The subject parcel is located at 400 Merrie Lane, Fallston, MD 21047 and is more particularly identified on Tax Map 55, Grid 2E, Parcel 776, Lot 3. The subject parcel consists of 0.50± acres, is zoned RR/Rural Residential and is entirely within the Third Election District.

Mrs. Madeline E. Emm appeared and testified that she owns a corner property bordering Merrie Lane and Terry Way and that she is the Co-Applicant with her husband. She constructed a 6 foot fence along Terry Way that ties into her neighbor's fence (the fence of her neighbor is the subject of Board of Appeals Case 5196). The fence is designed for privacy and noise reduction which are needed because of the corner configuration of the lots and the proximity to Maryland Route 1. The witness testified that her property is one-tenth of a mile from U.S. Route 1 and highway noise is very loud without the fence. According to the Applicant the fence provides security, privacy and some noise reduction and will not have adverse impacts on adjoining properties. Similarly, the Applicant has a small gazebo in the yard which is screened from view by the fence which is the subject of this Application. The gazebo is used for outdoor recreation and is located to the portion of the property used as the back yard (although considered a front yard because of the corner lot configuration).

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Without the variance for the fence and gazebo, the Applicant stated that complying with the 40 foot setback would eliminate any yard on her property that could be adequately fenced and there simply would be no way to have anything in the rear yard. The Applicant stated that the fence was built along with their neighbor's fence so aesthetically, the result would be pleasing to the eye and uniform along Terry Way. The fence screens the gazebo from view of passersby and serves the same purpose as increased setback distance according to the witness. If the variance were not granted, the Applicant would be deprived of the right to have a small gazebo structure in what is used as the rear yard of her property. This results only from the corner configuration and is not common to other non-corner lots in the neighborhood. The Applicant did not feel as though any adverse impacts would result from the grant of her requests.

The Department of Planning and Zoning investigated this request and concluded that the subject property was uniquely configured, that a 6 foot fence would provide enhanced security and noise reduction without adverse impacts to adjoining and/or neighboring properties and recommended approval of the fence height requested. Similarly, the Department agreed that the placement of the gazebo coupled with the existing fence satisfied the purposes and intent of the Code and recommended approval of the variance requested.

There were no persons who appeared in opposition to the request.

### **CONCLUSION:**

The Applicants are seeking a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow a fence higher than 4 feet (existing 6 feet), and a variance pursuant to Sections 267-26C(4) and 267-35B, Table III, to allow a gazebo within the front yard setback in an RR/Rural Residential District.

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**Section 267-24B(1) of the Harford County Code provides:**

**“Fences and walls. Fences and walls may be located in required yards in accordance with the following:**

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”**

**Section 267-26C(4) of the Harford County Code provides:**

**“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements.”**

**The Harford County Code, pursuant to 267-11 permits variances and provides:**

**“Variances from the provisions or requirements of this Code may be granted if the Board finds that:**

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

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The Hearing Examiner finds that the property is unique because of its size and corner configuration. The proposed fence height and gazebo location will not result in adverse impacts to adjoining properties nor will the purposes of the Harford County Zoning Code be impaired. The Hearing Examiner recommends approval of the requested variances, subject to the conditions that the Applicant obtain any and all necessary permits and inspections.

**Date: JANUARY 30, 2002**

**William F. Casey  
Zoning Hearing Examiner**